



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

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POLICY

Crown Counsel must be fully cognizant of their legal obligation regarding disclosure to the accused under Stinchcombe v. The Queen.

Full, frank, and fair disclosure is essential to protect the constitutional right of an accused person to a fair trial.

Crown Counsel should err on the side of inclusion when determining whether information is relevant and must be disclosed to an accused.

Crown Counsel should ensure that disclosure is made in a timely manner so that the prosecution can proceed without unreasonable delay. Disclosure is an obligation which continues throughout the prosecution.

DISCUSSION

In Stinchcombe v. The Queen [1991] 3 S.C.R. 326, the Supreme Court of Canada confirmed that Crown Counsel has a duty to disclose all relevant information in their possession to the accused, whether inculpatory or exculpatory, as soon as it becomes available. Crown Counsel may exercise a discretion to refuse to disclose information that is privileged or clearly irrelevant. Disclosure of relevant information may be delayed in order to protect witnesses and ongoing investigations, but that information must be disclosed before trial. Relevant information must be disclosed whether or not Crown Counsel intends to introduce it in evidence - that includes all information of reasonably possible use to the defence in making full answer and defence.

Therefore, with certain exceptions, the results of police investigations which have led to the laying of charges are not exclusively the property of the Crown, and Crown Counsel has a duty to make disclosure to the accused under Stinchcombe to ensure that justice is done.

Full disclosure ensures fairness in the criminal process. As the Supreme Court of Canada has noted, "full and fair disclosure is a fundamental aspect of the Crown's duty to serve the Court as

a faithful public agent, entrusted not with winning or losing trials but rather seeing that justice is served.” R. v. O’Connor [1995] 4 S.C.R. 411, and R. v. Taillefer and R. v. Duguay [2003] 3 S.C.R. 307.

Disclosure permits the accused to know the case to be met and facilitates full answer and defence. In addition, proper disclosure encourages the resolution of facts in issue in advance of the preliminary hearing or trial and also encourages the entering of guilty pleas in appropriate cases at an early stage of the proceedings.

Crown Counsel have both a legal obligation and a professional responsibility to disclose to an accused person all information in the possession or control of the Crown that is not clearly irrelevant or privileged. In every case where Crown Counsel exercises discretion with respect to disclosure, that exercise of discretion is subject to review by the court.

The professional duty of disclosure on Crown Counsel is set out in the *Professional Conduct Handbook*, Chapter 1, section 1(2):

When engaged as a Crown prosecutor, a lawyer’s primary duty is not to seek a conviction but to see that justice is done; to that end the lawyer should make timely disclosure to the defence of all facts and known witnesses whether tending to show guilt or innocence, or that would affect the punishment of the accused.

Examples of Material that is Generally Disclosed

The following are examples of what Crown Counsel must generally provide to the defence in every case where available and regardless of whether the Crown intends to use the information or adduce it at trial. It is not intended to be an exhaustive list of what must be disclosed. Crown Counsel must exercise judgment to determine the manner and degree of disclosure that is necessary and appropriate in a particular case. In particular, Crown Counsel must ensure that any editing of materials disclosed is restricted to only those individual pieces of information that are either irrelevant or privileged.

Where available, the accused should generally be provided with the following:

1. A copy of the charging document.
2. Narrative of the circumstances surrounding the offence.
3. Copies of all notes made by members of the investigative agency relating to the offence.
4. Copies of all written statements made by persons with relevant information relating to the offence charged. If no written statements were made, any notes taken or made by investigators present or conducting interviews of these persons should be disclosed. If no notes were taken, the accused should be provided with a will-say summarizing the anticipated evidence of these persons.

5. Copies of, or an appropriate opportunity to privately view and listen to, any audio or videotaped of statements made by any witnesses. The nature and circumstances of the case and of the witness statement will guide Crown Counsel in determining which of these alternatives is most appropriate and the scope of any undertakings that should be obtained to protect legitimate privacy interests.
6. Copies of all written, audio or videotaped statements made by the accused to a person in authority including any notes taken or made by the person in authority or the investigative agency with respect to the statements.
7. Particulars of the criminal record of the accused and, if appropriate, any co-accused.
8. Copies of any expert reports relating to the offence, except to the extent that they contain irrelevant or privileged information, whether helpful to the Crown or not. Crown Counsel should be mindful of the notice provisions set out in section 657.3 of the *Criminal Code* if an expert is to be called as a witness or his or her report is to be tendered as evidence.
9. Copies of all relevant documents, photographs, and audio or videotapes of anything other than a statement of a person, whether or not Crown Counsel intends to introduce them as exhibits in court.
10. Copies of any search warrants relied on by the Crown, the Informations in support, and a list of any items seized pursuant to the warrants.
11. An appropriate opportunity to inspect any items seized or acquired during the investigation of the offence that are relevant to the charges against the accused.
12. If intercepted private communications will be tendered, a copy of the judicial authorization or written consent under which private communications were intercepted. Crown Counsel should also consult the Practice Bulletin entitled Intercepted Private Communications - Disclosure.
13. Similar fact evidence that Crown Counsel intends to rely on at trial.
14. Particulars of any procedures used to identify the accused outside of court, and any information that may bear on the reliability of identification evidence relied on by the Crown.
15. Upon request, information about the criminal records of material Crown or defence witnesses relevant to credibility. Crown Counsel's obligation to check the criminal record of a witness and provide this information to the defence is limited to material witnesses whose credibility is in issue. Crown Counsel should also consult the Practice Bulletin entitled Criminal Record Information of Crown Witnesses – Disclosure of.

16. Any information in the possession or control of Crown Counsel that the defence may use to impeach the credibility of a Crown witness in respect of the facts in issue in a case. This would include any prior inconsistent statements or subsequent recantations, the particulars of any benefit or advantage discussed with, promised to, or received by a proposed Crown witness, or any other information known by Crown Counsel to be relevant to the reliability or credibility of the witness.
17. Any additional relevant information received or materially inconsistent statements made by a witness during an interview by Crown Counsel in preparation for trial. In this situation, the police will generally take a new statement from the witness and disclosure will be made. If inconsistencies are minor or if there is insufficient time before a trial, Crown Counsel may provide a letter to defence counsel or make disclosure verbally.

Practice Bulletin regarding Exceptions to Disclosure

The Practice Bulletin entitled Disclosure – Exceptions to the General Rules of Disclosure of all Relevant Material provides advice on the categories of material that are not subject to disclosure or are subject to delayed or limited disclosure.